IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

ST.Rev..No. 74 of 2003

AITA.100/2000 of AGRICULTURAL INCOME TAX APPELLATE TRIBUNAL, KOZHIKODE BENCH: KOZHIKOIDE.

.....

PETITIONER

THE CENTRAL STATE FARM: ARALAM FARM
POST: KANNUR DISTRICT.

BY ADV. SRI.M.RAMESH CHANDER
SRI.P.RAGHUNATH

RESPONDENTS:
---

1. AGRICULTURAL INCOMETAX OFFICER
   TALIPARAMBA.

2. KERALA AGRICULTURAL .INCOMETAX APPELLATE
   TRIBUNAL, ADDL.BENCH, KOZHIKODE.

3. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO TAXES DEPARTMENT,
   THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 13/09/2007, ALONG WITH STRV NO. 134 OF 2003 STRV NO. 135 OF 2003 STRV NO. 136 OF 2003 STRV NO. 137 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos.74, 134, 135, 136 & 137 of 2003

Dated this the 13th day of September, 2007.

O R D E R

H.L.Dattu, C.J.

Since common questions of law and fact are involved in these revision petitions, they are clubbed together, heard and disposed of by this common order.

2. The matter arises under the provisions of the Kerala Agricultural Income Tax Act. The assessment years in question are 1997-98, 1991-92, 1996-97, 1994-95 and 1992-93 respectively.

3. In these tax revision cases the assessee has framed the following questions of law for our consideration and decision.

> "A. Whether the Tribunal was justified in holding that the revision petitioner is not eligible to carry forward and set off loss for the years 1991-92 to 1996-97 on the ground that they have not filed returns in the prescribed form on or before the due date for the assessment years 1991-92 to 1996-97?
>
> B. Whether the Appellate Tribunal is justified in holding that in view of the provisions of Rule 13 of the AIT Act, claim for set off loss for 1991-92 to 1996-97 cannot be allowed, notwithstanding the fact that Sec.12 of the Act provides for carry forward of loss for 8 years?
>
> C. Whether the Tribunal is right in holding that in the case of the Revision Petitioner, the last date for filing Return of Income is 31st day of December every year and that the Revision Petitioner is covered by Sec.35(1) of the AIT Act?

D. Whether the Tribunal committed an error in dismissing the application for re-opening the hearing of the appeals on 16-03-2002 on the ground that prima facie no grounds have been made out?

E. Whether the Appellate Tribunal is not bound by the decision of the other Benches of the Tribunal in AITA No.150, 151, 156 and 157/97 dated 23-01-1998 wherein it has been held that the appellant is entitled to carry forward of loss even though they did not file returns of income within the time stipulated, especially in view of the decision of the Madras High Court in 110/ ITR 453?

4. In our opinion, the questions of law framed by the assessee is no more res integra, in view of the observations made by this Court in the case of **Deputy Commissioner V. Yucos Family Trust (TRC. No. 379 of 1998)** dated 9-10-2002. In the said decision this Court has observed as under.

"A reading of S.12 of the Act will show that the only limitation is that loss can be carried forward only for eight years. There is no other condition attached. R. 13 of the Kerala Agricultural Income Tax Rules is as follows: "Carry forward of loss in accordance with S.12 is admissible in any year when return is filed for all the years on the due date or within such time as may be allowed by the Agricultural Income Tax Officer along with audited statement of accounts and a statement in Form 17. The assessee is entitled to carry forward loss, even though it did not file its return of income within the time prescribed under sub-s. (1) of S.139 of the Income Tax Act. In the above view of the matter, we are of the view that the Tribunal is correct in holding that the loss can be carried forward even if the return is not filed in time."

3. In view of the law declared by this Court in the afore-said

decision, the questions of law framed requires to be answered in favour of the assessee and against the revenue.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS